

this notice should be adopted and to what extent, if any, the approaches should be further combined or modified to produce a set of rules that is both administrable and reflective of statutory intent. The IRS is particularly interested in comments regarding whether a simpler methodology, such as one that would determine the basis of all surrendered shares by using a weighted average trading price, would be helpful to taxpayers and appropriate for the tax system. The IRS also specifically requests comments regarding the determination of basis in atypical transferred basis transactions, such as acquisitions in bankruptcy reorganizations, acquisitions

involving foreign transfer agents, and acquisitions involving foreign corporations that may be subject to the rules of § 1.367(b)–13.

Comments should refer to **Notice 2009–4** and should be submitted to:

Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044
Attn: CC:PA:LPD:PR
Room 5203

or electronically via
the IRS internet site at:
Notice.Comments@irs.counsel.treas.gov.

All comments will be available for public inspection and copying.

VIII. DRAFTING INFORMATION

The principal authors of this notice are George Johnson of the Office of Associate Chief Counsel (Corporate) and Ed Cohen of LMSB. For further information regarding this notice generally, contact Mr. Johnson at (202) 622–7930 (not a toll-free number). For further information about estimation techniques described in this notice, contact Edward Cohen at (212) 719–6693 (not a toll-free number).

26 CFR 601.201: Rulings and determination letters.

Rev. Proc. 2009–9

TABLE OF CONTENTS

SECTION 1. WHAT IS THE PURPOSE OF THIS REVENUE PROCEDURE?	257
.01 Description of terms used in this revenue procedure.	257
.02 Updated annually	258
SECTION 2. NATURE OF CHANGES AND RELATED REVENUE PROCEDURES.	258
.01 Rev. Proc. 2008–9 is superseded and the processing of applications is now centralized.	258
.02 Related revenue procedures	258
SECTION 3. WHAT ARE THE PROCEDURES FOR REQUESTING RECOGNITION OF EXEMPT STATUS?	259
.01 In general.	259
.02 User fee	259
.03 Form 1023 application	259
.04 Form 1024 application	259
.05 Letter application	259
.06 Form 1028 application	259
.07 Form 8871 notice for political organizations	259
.08 Requirements for a substantially completed application	259
.09 Terrorist organizations not eligible to apply for recognition of exemption	260
SECTION 4. WHAT ARE THE STANDARDS FOR ISSUING A DETERMINATION LETTER OR RULING ON EXEMPT STATUS?	260
.01 Exempt status must be established in application and supporting documents	260
.02 Determination letter or ruling based solely on administrative record.	260
.03 Exempt status may be recognized in advance of actual operations	260
.04 No letter if exempt status issue in litigation or under consideration within the Service	260
.05 Incomplete application	261
.06 Even if application is complete, additional information may be required	261
.07 Expedited handling	261
SECTION 5. WHAT OFFICES ISSUE AN EXEMPT STATUS DETERMINATION LETTER OR RULING?	261
.01 EO Determinations issues a determination letter in most cases	261
.02 Certain applications referred to EO Technical	261
.03 Technical advice may be requested in certain cases	262
.04 Technical advice must be requested in certain cases	262

SECTION 6. WITHDRAWAL OF AN APPLICATION.	262
.01 Application may be withdrawn prior to issuance of a determination letter or ruling	262
.02 § 7428 implications of withdrawal of application under § 501(c)(3)	262
SECTION 7. WHAT ARE THE PROCEDURES WHEN EXEMPT STATUS IS DENIED?	262
.01 Proposed adverse determination letter or ruling	262
.02 Appeal of a proposed adverse determination letter issued by EO Determinations	262
.03 Protest of a proposed adverse ruling issued by EO Technical	263
.04 Final adverse determination letter or ruling where no appeal or protest is submitted	263
.05 How EO Determinations handles an appeal of a proposed adverse determination letter	263
.06 Consideration by the Appeals Office	263
.07 If a protest of a proposed adverse ruling is submitted to EO Technical	263
.08 An appeal or protest may be withdrawn	263
.09 Appeal or protest and conference rights not applicable in certain situations	263
SECTION 8. DISCLOSURE OF APPLICATIONS AND DETERMINATION LETTERS AND RULINGS	263
.01 Disclosure of applications, supporting documents, and favorable determination letters and rulings	263
.02 Disclosure of adverse determination letters or rulings	264
.03 Disclosure to State officials when the Service refuses to recognize exemption under § 501(c)(3)	264
.04 Disclosure to State officials of information about § 501(c)(3) applicants	264
SECTION 9. REVIEW OF DETERMINATION LETTERS BY EO TECHNICAL	264
.01 Determination letters may be reviewed by EO Technical to assure uniformity	264
.02 Procedures for cases where EO Technical takes exception to a determination letter	264
SECTION 10. DECLARATORY JUDGMENT PROVISIONS OF § 7428	264
.01 Actual controversy involving certain issues	264
.02 Exhaustion of administrative remedies	264
.03 Not earlier than 270 days after seeking determination	265
.04 Service must have reasonable time to act on an appeal or protest	265
.05 Final determination to which § 7428 applies	265
SECTION 11. EFFECT OF DETERMINATION LETTER OR RULING RECOGNIZING EXEMPTION	265
.01 Effective date of exemption	265
.02 Reliance on determination letter or ruling	265
SECTION 12. REVOCATION OR MODIFICATION OF DETERMINATION LETTER OR RULING RECOGNIZING EXEMPTION	266
.01 Revocation or modification of a determination letter or ruling may be retroactive	266
.02 Appeal and conference procedures in the case of revocation or modification of exempt status letter	266
SECTION 13. EFFECT ON OTHER REVENUE PROCEDURES	266
SECTION 14. EFFECTIVE DATE	266
SECTION 15. PAPERWORK REDUCTION ACT	266
DRAFTING INFORMATION	267

SECTION 1. WHAT IS THE PURPOSE OF THIS REVENUE PROCEDURE?

This revenue procedure sets forth procedures for issuing determination letters and rulings on the exempt status of organizations under §§ 501 and 521 of the Internal Revenue Code other than those subject to Rev. Proc. 2009–6, 2009–1 I.R.B. 189 (relating to pension, profit-sharing, stock bonus, annuity, and employee stock ownership plans). Generally, the Service issues these determination letters and rulings in response to applications for recognition of exemption from Federal income tax. These procedures also apply to revocation or modification of determination letters or rulings. This revenue procedure also provides guidance on the exhaustion of administrative remedies for purposes of declaratory judgment under § 7428 of the Code.

Description of terms used in this revenue procedure

- .01 For purposes of this revenue procedure –
 - (1) the term “Service” means the Internal Revenue Service.

(2) the term “application” means the appropriate form or letter that an organization must file or submit to the Service for recognition of exemption from Federal income tax under the applicable section of the Internal Revenue Code. *See* section 3 for information on specific forms.

(3) the term “EO Determinations” means the office of the Service that is primarily responsible for processing initial applications for tax-exempt status. It includes the main EO Determinations office located in Cincinnati, Ohio, and other field offices that are under the direction and control of the Manager, EO Determinations.

(4) the term “EO Technical” means the office of the Service that is primarily responsible for issuing letter rulings to taxpayers on exempt organization matters, and for providing technical advice or technical assistance to other offices of the Service on exempt organization matters. The EO Technical office is located in Washington, DC.

(5) the term “Appeals Office” means any office under the direction and control of the Chief, Appeals. The purpose of the Appeals Office is to resolve tax controversies, without litigation, on a fair and impartial basis. The Appeals Office is independent of EO Determinations and EO Technical.

(6) the term “determination letter” means a written statement issued by EO Determinations or an Appeals Office in response to an application for recognition of exemption from Federal income tax under §§ 501 and 521. This includes a written statement issued by EO Determinations or an Appeals Office on the basis of advice secured from EO Technical pursuant to the procedures prescribed herein and in Rev. Proc. 2009–5, 2009–1 I.R.B. 161.

(7) the term “ruling” means a written statement issued by EO Technical in response to an application for recognition of exemption from Federal income tax under §§ 501 and 521.

Updated annually

.02 This revenue procedure is updated annually, but may be modified or amplified during the year.

SECTION 2. NATURE OF CHANGES AND RELATED REVENUE PROCEDURES

Rev. Proc. 2008–9 is superseded and the processing of applications is now centralized

.01 This revenue procedure updates Rev. Proc. 2008–9, 2008–2 I.R.B. 258, which is hereby superseded.

(1) The responsibility for processing applications is now centralized in the EO Determinations office in Cincinnati, Ohio. Key district offices no longer exist.

(2) Although applications are generally processed in the Cincinnati office, some applications may be processed in other EO Determinations offices or referred to EO Technical.

Related revenue procedures

.02 This revenue procedure supplements Rev. Proc. 76–34, 1976–2 C.B. 656, with respect to the effects of § 7428 of the Code on the classification of organizations under §§ 509(a) and 4942(j)(3). Rev. Proc. 80–27, 1980–1 C.B. 677, sets forth procedures under which exemption may be recognized on a group basis for subordinate organizations affiliated with and under the general supervision and control of a central organization. Rev. Proc. 72–5, 1972–1 C.B. 709, provides information for religious and apostolic organizations seeking recognition of exemption under § 501(d). General procedures for requests for a determination letter or ruling are provided in Rev. Proc. 2009–4, 2009–1 I.R.B. 118. User fees for requests for a determination letter or ruling are set forth in Rev. Proc. 2009–8, 2009–1 I.R.B. 229.

SECTION 3. WHAT ARE THE PROCEDURES FOR REQUESTING RECOGNITION OF EXEMPT STATUS?

In general

.01 An organization seeking recognition of exempt status under § 501 or § 521 is required to submit the appropriate application. In the case of a numbered application form, the current version of the form must be submitted. A central organization that has previously received recognition of its own exemption can request a group exemption letter by submitting a letter application with Form 8718, *User Fee for Exempt Organization Determination Letter Request*. See Rev. Proc. 80–27.

User fee

.02 An application must be submitted with the correct user fee, as set forth in Rev. Proc. 2009–8.

Form 1023 application

.03 An organization seeking recognition of exemption under § 501(c)(3) and §§ 501(e), (f), (k), (n) or (q) must submit a completed Form 1023. In the case of an organization that provides credit counseling services, see § 501(q) of the Code.

Form 1024 application

.04 An organization seeking recognition of exemption under §§ 501(c)(2), (4), (5), (6), (7), (8), (9), (10), (12), (13), (15), (17), (19) or (25) must submit a completed Form 1024 with Form 8718. In the case of an organization that provides credit counseling services and seeks recognition of exemption under section 501(c)(4), see § 501(q) of the Code.

Letter application

.05 An organization seeking recognition of exemption under §§ 501(c)(11), (14), (16), (18), (21), (22), (23), (26), (27) or (28) or under § 501(d) must submit a letter application with Form 8718.

Form 1028 application

.06 An organization seeking recognition of exemption under § 521 must submit a completed Form 1028 with Form 8718.

Form 8871 notice for political organizations

.07 A political party, a campaign committee for a candidate for federal, state or local office, and a political action committee are all political organizations subject to tax under § 527. To be tax-exempt, a political organization may be required to notify the Service that it is to be treated as a § 527 organization by electronically filing Form 8871, *Political Organization Notice of Section 527 Status*. For details, go to the IRS website at www.irs.gov/polorgs.

Requirements for a substantially completed application

.08 A substantially completed application, including a letter application, is one that:

(1) is signed by an authorized individual.

(2) includes an Employer Identification Number (EIN).

(3) includes a statement of receipts and expenditures and a balance sheet for the current year and the three preceding years (or the years the organization was in existence, if less than four years). If the organization has not yet commenced operations, or has not completed one accounting period, a substantially completed application generally includes a proposed budget for two full accounting periods and a current statement of assets and liabilities.

(4) includes a detailed narrative statement of proposed activities, including each of the fundraising activities of a § 501(c)(3) organization, and a narrative description of anticipated receipts and contemplated expenditures.

(5) includes a copy of the organizing or enabling document that is signed by a principal officer or is accompanied by a written declaration signed by an authorized individual certifying that the document is a complete and accurate copy of the original or otherwise meets the requirements of a “conformed copy” as outlined in Rev. Proc. 68–14, 1968–1 C.B. 768.

(6) if the organizing or enabling document is in the form of articles of incorporation, includes evidence that it was filed with and approved by an appropriate state official (e.g., stamped

“Filed” and dated by the Secretary of State). Alternatively, a copy of the articles of incorporation may be submitted if accompanied by a written declaration signed by an authorized individual that the copy is a complete and accurate copy of the original copy that was filed with and approved by the state. If a copy is submitted, the written declaration must include the date the articles were filed with the state.

(7) if the organization has adopted by-laws, includes a current copy. The by-laws need not be signed if submitted as an attachment to the application for recognition of exemption. Otherwise, the by-laws must be verified as current by an authorized individual.

(8) is accompanied by the correct user fee and Form 8718, when applicable.

Terrorist organizations not eligible to apply for recognition of exemption

.09 An organization that is identified or designated as a terrorist organization within the meaning of § 501(p)(2) of the Code is not eligible to apply for recognition of exemption.

SECTION 4. WHAT ARE THE STANDARDS FOR ISSUING A DETERMINATION LETTER OR RULING ON EXEMPT STATUS?

Exempt status must be established in application and supporting documents

.01 A favorable determination letter or ruling will be issued to an organization only if its application and supporting documents establish that it meets the particular requirements of the section under which exemption from Federal income tax is claimed.

Determination letter or ruling based solely on administrative record

.02 A determination letter or ruling on exempt status is issued based solely upon the facts and representations contained in the administrative record.

(1) The applicant is responsible for the accuracy of any factual representations contained in the application.

(2) Any oral representation of additional facts or modification of facts as represented or alleged in the application must be reduced to writing over the signature of an officer or director of the taxpayer under a penalties of perjury statement.

(3) The failure to disclose a material fact or misrepresentation of a material fact on the application may adversely affect the reliance that would otherwise be obtained through issuance by the Service of a favorable determination letter or ruling.

Exempt status may be recognized in advance of actual operations

.03 Exempt status may be recognized in advance of the organization’s operations if the proposed activities are described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements for exemption pursuant to the section of the Internal Revenue Code under which exemption is claimed.

(1) A mere restatement of exempt purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement.

(2) The organization must fully describe all of the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures.

(3) Where the organization cannot demonstrate to the satisfaction of the Service that it qualifies for exemption pursuant to the section of the Internal Revenue Code under which exemption is claimed, the Service will generally issue a proposed adverse determination letter or ruling. *See also* section 7.

No letter if exempt status issue in litigation or under consideration within the Service

.04 A determination letter or ruling on exempt status will not ordinarily be issued if an issue involving the organization’s exempt status under § 501 or § 521 is pending in litigation, is under consideration within the Service, or if issuance of a determination letter or ruling is not in the interest of sound tax administration. If the Service declines to issue a determination or ruling to an organization seeking exempt status under § 501(c)(3), the organization may be able to

pursue a declaratory judgment under § 7428 provided that it has exhausted its administrative remedies.

Incomplete application

.05 If an application does not contain all of the items set out in section 3.08, the Service may return it to the applicant for completion.

(1) In lieu of returning an incomplete application, the Service may retain the application and request additional information needed for a substantially completed application.

(2) In the case of an application or a group exemption request under § 501(c)(3) that is returned incomplete, the 270-day period referred to in § 7428(b)(2) will not be considered as starting until the date a substantially completed Form 1023 or group exemption request is refiled with or remailed to the Service. If the application or group exemption request is mailed to the Service and a postmark is not evident, the 270-day period will start to run on the date the Service actually receives the substantially completed Form 1023 or group exemption request. The same rules apply for purposes of the notice requirement of § 508.

(3) Generally, the user fee will not be refunded if an incomplete application is filed. *See* Rev. Proc. 2009–8, section 10.

Even if application is complete, additional information may be required

.06 Even though an application is substantially complete, the Service may request additional information before issuing a determination letter or ruling.

(1) If the application involves an issue where contrary authorities exist, an applicant's failure to disclose and distinguish contrary authorities may result in requests for additional information, which could delay final action on the application.

(2) In the case of an application under § 501(c)(3), the period of time beginning on the date the Service requests additional information until the date the information is submitted to the Service will not be counted for purposes of the 270-day period referred to in § 7428(b)(2).

Expedited handling

.07 Applications are normally processed in the order of receipt by the Service. However, expedited handling of an application may be approved where a request is made in writing and contains a compelling reason for processing the application ahead of others. Upon approval of a request for expedited handling an application will be considered out of its normal order. This does not mean the application will be immediately approved or denied. Circumstances generally warranting expedited processing include:

(1) A grant to the applicant is pending and the failure to secure the grant may have an adverse impact on the organization's ability to continue to operate.

(2) The purpose of the newly created organization is to provide disaster relief to victims of emergencies such as flood and hurricane.

(3) There have been undue delays in issuing a determination letter or ruling caused by a Service error.

SECTION 5. WHAT OFFICES ISSUE AN EXEMPT STATUS DETERMINATION LETTER OR RULING?

EO Determinations issues a determination letter in most cases

.01 Under the general procedures outlined in Rev. Proc. 2009–4, EO Determinations is authorized to issue determination letters on applications for exempt status under §§ 501 and 521.

Certain applications referred to EO Technical

.02 EO Determinations will refer to EO Technical those applications that present issues which are not specifically covered by statute or regulations, or by a ruling, opinion, or court decision published in the Internal Revenue Bulletin. In addition, EO Determinations will refer those applications that have been specifically reserved by revenue procedure or by other official Service instructions for handling by EO Technical for purposes of establishing uniformity or

centralized control of designated categories of cases. EO Technical will notify the applicant organization upon receipt of a referred application, and will consider each such application and issue a ruling directly to the organization.

Technical advice may be requested in certain cases

.03 If at any time during the course of consideration of an exemption application by EO Determinations the organization believes that its case involves an issue on which there is no published precedent, or there has been non-uniformity in the Service's handling of similar cases, the organization may request that EO Determinations either refer the application to EO Technical or seek technical advice from EO Technical. *See* Rev. Proc. 2009-5, section 4.04.

Technical advice must be requested in certain cases

.04 If EO Determinations proposes to recognize the exemption of an organization to which EO Technical had issued a previous contrary ruling or technical advice, EO Determinations must seek technical advice from EO Technical before issuing a determination letter. This does not apply where EO Technical issued an adverse ruling and the organization subsequently made changes to its purposes, activities, or operations to remove the basis for which exempt status was denied.

SECTION 6. WITHDRAWAL OF AN APPLICATION

Application may be withdrawn prior to issuance of a determination letter or ruling

.01 An application may be withdrawn upon the written request of an authorized individual at any time prior to the issuance of a determination letter or ruling. Therefore, an application may not be withdrawn after the issuance of a proposed adverse determination letter or ruling.

(1) When an application is withdrawn, the Service will retain the application and all supporting documents. The Service may consider the information submitted in connection with the withdrawn request in a subsequent examination of the organization.

(2) Generally, the user fee will not be refunded if an application is withdrawn. *See* Rev. Proc. 2009-8, section 10.

§ 7428 implications of withdrawal of application under § 501(c)(3)

.02 The Service will not consider the withdrawal of an application under § 501(c)(3) as either a failure to make a determination within the meaning of § 7428(a)(2) or as an exhaustion of administrative remedies within the meaning of § 7428(b)(2).

SECTION 7. WHAT ARE THE PROCEDURES WHEN EXEMPT STATUS IS DENIED?

Proposed adverse determination letter or ruling

.01 If EO Determinations or EO Technical reaches the conclusion that the organization does not satisfy the requirements for exempt status pursuant to the section of the Internal Revenue Code under which exemption is claimed, the Service will generally issue a proposed adverse determination letter or ruling, which will:

(1) Include a detailed discussion of the Service's rationale for the denial of tax-exempt status.

(2) Advise the organization of its opportunity to appeal or protest the decision and request a conference.

Appeal of a proposed adverse determination letter issued by EO Determinations

.02 A proposed adverse determination letter issued by EO Determinations will advise the organization of its opportunity to appeal the determination by requesting Appeals Office consideration. To do this, the organization must submit a statement of the facts, law and arguments in support of its position within 30 days from the date of the adverse determination letter. The organization must also state whether it wishes an Appeals Office conference. Any determination letter issued on the basis of technical advice from EO Technical may not be appealed to the Appeals Office on issues that were the subject of the technical advice.

Protest of a proposed adverse ruling issued by EO Technical

.03 A proposed adverse ruling issued by EO Technical will advise the organization of its opportunity to file a protest statement within 30 days and to request a conference. If a conference is requested, the conference procedures outlined in Rev. Proc. 2009–4, section 12, are applicable.

Final adverse determination letter or ruling where no appeal or protest is submitted

.04 If an organization does not submit a timely appeal of a proposed adverse determination letter issued by EO Determinations, or a timely protest of a proposed adverse ruling issued by EO Technical, a final adverse determination letter or ruling will be issued to the organization. The final adverse letter or ruling will provide information about the filing of tax returns and the disclosure of the proposed and final adverse letters or rulings.

How EO Determinations handles an appeal of a proposed adverse determination letter

.05 If an organization submits an appeal of the proposed adverse determination letter, EO Determinations will first review the appeal, and if it determines that the organization qualifies for tax-exempt status issue a favorable exempt status determination letter. If EO Determinations maintains its adverse position after reviewing the appeal, it will forward the appeal and the exemption application case file to the Appeals Office.

Consideration by the Appeals Office

.06 The Appeals Office will consider the organization’s appeal. If the Appeals Office agrees with the proposed adverse determination, it will either issue a final adverse determination or, if a conference was requested, contact the organization to schedule a conference. At the end of the conference process, which may involve the submission of additional information, the Appeals Office will either issue a final adverse determination letter or a favorable determination letter. If the Appeals Office believes that an exemption or private foundation status issue is not covered by published precedent or that there is non-uniformity, the Appeals Office must request technical advice from EO Technical in accordance with Rev. Proc. 2009–5, section 4.04.

If a protest of a proposed adverse ruling is submitted to EO Technical

.07 If an organization submits a protest of a proposed adverse exempt status ruling, EO Technical will review the protest statement. If the protest convinces EO Technical that the organization qualifies for tax-exempt status, a favorable ruling will be issued. If EO Technical maintains its adverse position after reviewing the protest, it will either issue a final adverse ruling or, if a conference was requested, contact the organization to schedule a conference. At the end of the conference process, which may involve the submission of additional information, EO Technical will either issue a final adverse ruling or a favorable exempt status ruling.

An appeal or protest may be withdrawn

.08 An organization may withdraw its appeal or protest before the Service issues a final adverse determination letter or ruling. Upon receipt of the withdrawal request, the Service will complete the processing of the case in the same manner as if no appeal or protest was received.

Appeal or protest and conference rights not applicable in certain situations

.09 The opportunity to appeal or protest a proposed adverse determination letter or ruling and the conference rights described above are not applicable to matters where delay would be prejudicial to the interests of the Service (such as in cases involving fraud, jeopardy, the imminence of the expiration of the statute of limitations, or where immediate action is necessary to protect the interests of the Government).

SECTION 8. DISCLOSURE OF APPLICATIONS AND DETERMINATION LETTERS AND RULINGS

Sections 6104 and 6110 of the Code provide rules for the disclosure of applications, including supporting documents, and determination letters and rulings.

Disclosure of applications, supporting documents, and favorable determination letters or rulings

.01 The applications, any supporting documents, and the favorable determination letter or ruling issued are available for public inspection under § 6104(a)(1) of the Code. However, there are certain limited disclosure exceptions for a trade secret, patent, process, style of work, or apparatus if the Service determines that the disclosure of the information would adversely affect the organization.

(1) The Service is required to make the applications, supporting documents, and favorable determination letters or rulings available upon request. The public can request this information by submitting Form 4506–A, *Request for Public Inspection or Copy of Exempt or Political Organization IRS Form*.

(2) The exempt organization is required to make its exemption application, supporting documents, and determination letter or ruling available for public inspection without charge. For more information about the exempt organization's disclosure obligations, *see* Publication 557, *Tax-Exempt Status for Your Organization*.

Disclosure of adverse determination letters or rulings

.02 The Service is required to make adverse determination letters and rulings available for public inspection under § 6110 of the Code. Upon issuance of the final adverse determination letter or ruling to an organization, both the proposed adverse determination letter or ruling and the final adverse determination letter or ruling will be released under § 6110.

(1) These documents are made available to the public after the deletion of names, addresses, and any other information that might identify the taxpayer. *See* § 6110(c) for other specific disclosure exemptions.

(2) The final adverse determination letter or ruling will enclose Notice 437, *Notice of Intention to Disclose*, and redacted copies of the final and proposed adverse determination letters or rulings. Notice 437 provides instructions if the organization disagrees with the deletions proposed by the Service.

Disclosure to State officials when the Service refuses to recognize exemption under § 501(c)(3)

.03 The Service may notify the appropriate State officials of a refusal to recognize an organization as tax-exempt under § 501(c)(3). *See* § 6104(c) of the Code. The notice to the State officials may include a copy of a proposed or final adverse determination letter or ruling the Service issued to the organization. In addition, upon request by the appropriate State official, the Service may make available for inspection and copying the exemption application and other information relating to the Service's determination on exempt status.

Disclosure to State officials of information about § 501(c)(3) applicants

.04 The Service may disclose to State officials the name, address, and identification number of any organization that has applied for recognition of exemption under § 501(c)(3).

SECTION 9. REVIEW OF DETERMINATION LETTERS BY EO TECHNICAL

Determination letters may be reviewed by EO Technical to assure uniformity

.01 Determination letters issued by EO Determinations may be reviewed by EO Technical, or the Office of the Associate Chief Counsel (Passthroughs and Special Industries) (for cases under § 521), to assure uniform application of the statutes or regulations, or rulings, court opinions, or decisions published in the Internal Revenue Bulletin.

Procedures for cases where EO Technical takes exception to a determination letter

.02 If EO Technical takes exception to a determination letter issued by EO Determinations, the manager of EO Determinations will be advised. If EO Determinations notifies the organization of the exception taken, and the organization disagrees with the exception, the file will be returned to EO Technical. The referral to EO Technical will be treated as a request for technical advice and the procedures in Rev. Proc. 2009–5 will be followed.

SECTION 10. DECLARATORY JUDGMENT PROVISIONS OF § 7428

Actual controversy involving certain issues

.01 Generally, a declaratory judgment proceeding under § 7428 of the Code can be filed in the United States Tax Court, the United States Court of Federal Claims, or the district court of the United States for the District of Columbia with respect to an actual controversy involving a determination by the Service or a failure of the Service to make a determination with respect to the initial or continuing qualification or classification of an organization under § 501(c)(3) (charitable, educational, etc.); § 170(c)(2) (deductibility of contributions); § 509(a) (private foundation status); § 4942(j)(3) (operating foundation status); or § 521 (farmers cooperatives).

Exhaustion of administrative remedies

.02 Before filing a declaratory judgment action, an organization must exhaust its administrative remedies by taking, in a timely manner, all reasonable steps to secure a determination from the Service. These include:

(1) the filing of a substantially completed application Form 1023 or group exemption request under § 501(c)(3) pursuant to section 3.08 of this Revenue Procedure or the request for a determination of foundation status pursuant to Rev. Proc. 76-34;

(2) in appropriate cases, requesting relief pursuant to § 301.9100-1 of the Procedure and Administration Regulations regarding the extension of time for making an election or application for relief from tax (*see* Rev. Proc. 92-85, 1992-2 C.B. 490);

(3) the timely submission of all additional information requested by the Service to perfect an exemption application or request for determination of private foundation status; and

(4) exhaustion of all administrative appeals available within the Service pursuant to section 7.

Not earlier than 270 days after seeking determination

.03 An organization will in no event be deemed to have exhausted its administrative remedies prior to the earlier of:

(1) the completion of the steps in section 10.02, and the sending by the Service by certified or registered mail of a final determination letter or ruling; or

(2) the expiration of the 270-day period described in § 7428(b)(2) in a case where the Service has not issued a final determination letter or ruling and the organization has taken, in a timely manner, all reasonable steps to secure a determination letter or ruling.

Service must have reasonable time to act on an appeal or protest

.04 The steps described in section 10.02 will not be considered completed until the Service has had a reasonable time to act upon an appeal or protest as the case may be.

Final determination to which § 7428 applies

.05 A final determination to which § 7428 of the Code applies is a determination letter or ruling, sent by certified or registered mail, which holds that the organization is not described in § 501(c)(3) or § 170(c)(2), is a public charity described in a part of § 509 or § 170(b)(1)(A) other than the part under which the organization requested classification, is not a private foundation as defined in § 4942(j)(3), or is a private foundation and not a public charity described in a part of § 509 or § 170(b)(1)(A).

SECTION 11. EFFECT OF DETERMINATION LETTER OR RULING RECOGNIZING EXEMPTION

Effective date of exemption

.01 A determination letter or ruling recognizing exemption is usually effective as of the date of formation of an organization if its purposes and activities prior to the date of the determination letter or ruling were consistent with the requirements for exemption. However, special rules under § 508(a) of the Code may apply to an organization applying for exemption under § 501(c)(3), and special rules under § 505(c) may apply to an organization applying for exemption under §§ 501(c)(9), (17), or (20).

(1) If the Service requires the organization to alter its activities or make substantive amendments to its enabling instrument, the exemption will be effective as of the date specified in a determination letter or ruling.

(2) If the Service requires the organization to make a nonsubstantive amendment, exemption will ordinarily be recognized as of the date of formation. Examples of nonsubstantive amendments include correction of a clerical error in the enabling instrument or the addition of a dissolution clause where the activities of the organization prior to the determination letter or ruling are consistent with the requirements for exemption.

Reliance on determination letter or ruling

.02 A determination letter or ruling recognizing exemption may not be relied upon if there is a material change, inconsistent with exemption, in the character, the purpose, or the method of operation of the organization. Also, a determination letter or ruling may not be relied upon if it was based on any inaccurate material factual representations. *See* section 12.01.

SECTION 12. REVOCATION OR MODIFICATION OF DETERMINATION LETTER OR RULING RECOGNIZING EXEMPTION

Revocation or modification of a determination letter or ruling may be retroactive

A determination letter or ruling recognizing exemption may be revoked or modified by (1) a notice to the taxpayer to whom the determination letter or ruling was issued, (2) enactment of legislation or ratification of a tax treaty, (3) a decision of the United States Supreme Court, (4) the issuance of temporary or final regulations, or (5) the issuance of a revenue ruling, revenue procedure, or other statement published in the Internal Revenue Bulletin.

.01 The revocation or modification of a determination letter or ruling recognizing exemption may be retroactive if the organization omitted or misstated a material fact, operated in a manner materially different from that originally represented, or, in the case of organizations to which § 503 of the Code applies, engaged in a prohibited transaction with the purpose of diverting corpus or income of the organization from its exempt purpose and such transaction involved a substantial part of the corpus or income of such organization. In certain cases an organization may seek relief from retroactive revocation or modification of a determination letter or ruling under § 7805(b). Requests for § 7805(b) relief are subject to the procedures set forth in Rev. Proc. 2009–4.

(1) Where there is a material change, inconsistent with exemption, in the character, the purpose, or the method of operation of an organization, revocation or modification will ordinarily take effect as of the date of such material change.

(2) In the case where a determination letter or ruling is issued in error or is no longer in accord with the Service's position and § 7805(b) relief is granted (*see* sections 13 and 14 of Rev. Proc. 2009–4), ordinarily, the revocation or modification will be effective not earlier than the date when the Service modifies or revokes the original determination letter or ruling.

Appeal and conference procedures in the case of revocation or modification of exempt status letter

.02 In the case of a revocation or modification of a determination letter or ruling, the appeal and conference procedures are generally the same as set out in section 7 of these procedures, including the right of the organization to request that EO Determinations or the Appeals Office seek technical advice from EO Technical. However, appeal and conference rights are not applicable to matters where delay would be prejudicial to the interests of the Service (such as in cases involving fraud, jeopardy, the imminence of the expiration of the statute of limitations, or where immediate action is necessary to protect the interests of the Government).

(1) If the case involves an exempt status issue on which EO Technical had issued a previous contrary ruling or technical advice, EO Determinations generally must seek technical advice from EO Technical.

(2) EO Determinations does not have to seek technical advice if the prior ruling or technical advice has been revoked by subsequent contrary published precedent or if the proposed revocation involves a subordinate unit of an organization that holds a group exemption letter issued by EO Technical, the EO Technical ruling or technical advice was issued under the Internal Revenue Code of 1939 or prior revenue acts, or if the ruling was issued in response to Form 4653, *Notification Concerning Foundation Status*.

SECTION 13. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 2008–9 is superseded.

SECTION 14. EFFECTIVE DATE

This revenue procedure is effective January 12, 2009.

SECTION 15. PAPERWORK REDUCTION ACT

The collection of information for a letter application under section 3.05 of this revenue procedure has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545–2080. All other collections of information under this revenue procedure have been approved under separate OMB control numbers.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of this information is required if an organization wants to be recognized as tax-exempt by the Service. We need the information to determine whether the organization meets the legal requirements for tax-exempt status. In addition, this information will be used to help the Service delete certain information from the text of an adverse determination letter or ruling before it is made available for public inspection, as required by § 6110.

The time needed to complete and file a letter application will vary depending on individual circumstances. The estimated average time is 10 hours.

Books and records relating to the collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. The rules governing the confidentiality of letter applications are covered in § 6104.

DRAFTING INFORMATION

The principal author of this revenue procedure is Ted Lieber of the Exempt Organizations, Tax Exempt and Government Entities Division. For further information regarding this revenue procedure, please contact the TE/GE Customer Service office at (877) 829-5500 (a toll-free call).

26 CFR 601.601: Rules and regulations.
(Also Part I, §§ 61, 1012, 1016; 1.61-1.)

Rev. Proc. 2009-10

SECTION 1. PURPOSE

This revenue procedure provides a safe harbor for the treatment of certain payments received by a regulated investment company under Part 1 of subchapter M of the Internal Revenue Code (sections 851-855) that is a money market fund registered with the Securities and Exchange Commission and regulated under Rule 2a-7 of the Investment Company Act of 1940, 17 C.F.R. 270.2a-7 ("Money Market Fund").

SECTION 2. BACKGROUND

.01 *Payment.* Money Market Funds strive to maintain a stable per share net asset value of \$1.00. Persons who contract to perform investment advisory or management services ("Advisors") are concerned that a decline in per share net asset value to a threshold amount below \$1.00 (commonly referred to as "breaking the buck") will significantly harm their business reputations and could lead to litigation by shareholders. These Advisors may make a payment ("Payment") to the Money Market Fund in order to maintain a per share net asset value of \$1.00. This Payment is

not calculated with reference to the investment advisory fees paid or to be paid to the Advisor by the Money Market Fund, is not a loan to the Money Market Fund, and does not give the Advisor any ownership interest in the Money Market Fund.

.02 *Excess Amount Received in a Purchase Transaction.* Alternatively, for the same reasons described in section 2.01 of this revenue procedure, an Advisor may purchase an asset of a Money Market Fund for an amount that exceeds the asset's fair market value (such excess hereinafter referred to as an "Excess Amount"). For example, an Advisor may purchase a debt instrument from the Money Market Fund for \$100x at a time when the fair market value of the debt instrument is \$90x. When property is purchased for an amount above fair market value for a purpose other than the acquisition of the property, the Excess Amount (e.g., \$10x in the example in the preceding sentence) is generally not accounted for as part of the purchase/sale transaction for tax purposes. Thus, in the example, the Advisor is treated as having a cost basis in the purchased debt instrument of \$90x. The Excess Amount should be treated in the same manner as a Payment described in section 2.01 of this revenue procedure.

SECTION 3. SCOPE

This revenue procedure applies to a Money Market Fund that receives a Pay-

ment or Excess Amount described in section 2 of this revenue procedure.

SECTION 4. PROCEDURE

The Internal Revenue Service will not challenge the treatment of a Payment or Excess Amount by a Money Market Fund to which this revenue procedure applies if the Money Market Fund treats the Payment or Excess Amount as short-term capital gain in the taxable year in which the Payment or Excess Amount is received. No inference should be drawn from this revenue procedure as to whether or not other treatments of Payments or Excess Amounts may be appropriate.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective with respect to Payments or Excess Amounts received before January 1, 2010, by a Money Market Fund to which this revenue procedure applies.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Richard C. LaFalce of the Office of the Associate Chief Counsel (Financial Institutions & Products). For further information, contact him at (202) 622-3930 (not a toll-free call).